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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,876	12/08/2003	Carole Beaulieu	10857.369	1161
25545	7590	10/18/2006	EXAMINER	
GOUDREAU GAGE DUBUC 800 PLACE VICTORIA, SUITE 3400 MONTREAL, QUEBEC, H4Z 1E9 CANADA			MARX, IRENE	
			ART UNIT	PAPER NUMBER
			1651	

DATE MAILED: 10/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

The application should be reviewed for errors.

To facilitate processing of papers at the U.S. Patent and Trademark Office, it is recommended that the Application Serial Number be inserted on every page of claims and/or of amendments filed.

Applicant's election without traverse electing to prosecute the invention of Group I, claims 1-3 and 21-23 on 7/19/06 is acknowledged.

Claims 1-3 and 21-23 are being considered on the merits. Claims 15 and 24-28 are withdrawn from consideration as directed to a non-elected invention.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 is incomplete in lacking punctuation.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-3 and 21-23 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The invention appears to employ a specific strain of *Streptomyces*. It is not clear if the written description is sufficiently repeatable to avoid the need for a deposit. Further it is unclear if the starting materials were readily available to the public at the time of invention.

Art Unit: 1651

It appears that a deposit was made in this application as filed as noted on page 4 of the specification. However, it is not clear if the deposit meets all of the criteria set forth in 37 CFR 1.801-1.809. Applicant or applicant's representative may provide assurance of compliance with the requirements of 35 U.S.C § 112, first paragraph, in the following manner.

SUGGESTION FOR DEPOSIT OF BIOLOGICAL MATERIAL

A declaration by applicant, assignee, or applicant's agent identifying a deposit of biological material and averring the following may be sufficient to overcome an objection and rejection based on a lack of availability of biological material.

1. Identifies declarant.
2. States that a deposit of the material has been made in a depository affording permanence of the deposit and ready accessibility thereto by the public if a patent is granted. The depository is to be identified by name and address.
3. States that the deposited material has been accorded a specific (recited) accession number.
4. States that all restriction on the availability to the public of the material so deposited will be irrevocably removed upon the granting of a patent.
5. States that the material has been deposited under conditions that access to the material will be available during the pendency of the patent application to one determined by the Commissioner to be entitled thereto under 37 CFR 1.14 and 35 U.S.C § 122.
6. States that the deposited material will be maintained with all the care necessary to keep it viable and uncontaminated for a period of at least five years after the most recent request for the furnishing of a sample of the deposited microorganism, and in any case, for a period of at least thirty (30) years after the date of deposit for the enforceable life of the patent, whichever period is longer.
7. That he/she declares further that all statements made therein of his/her own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the instant patent application or any patent issuing thereon.

Alternatively, it may be averred that deposited material has been accepted for deposit under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the purpose of Patent Procedure (e.g. see 961 OG 21, 1977) and that all restrictions on the

Art Unit: 1651

availability to the public of the material so deposited will be irrevocably removed upon the granting of a patent.

Additionally, the deposit must be referred to in the body of the specification and be identified by deposit (accession) number, date of deposit, name and address of the depository and the complete taxonomic description.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 21 and 22 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Beausejour *et al.* in light of Agbessi *et al.*

The claims are directed to a strain of *Streptomyces* ATCC BAA-668 or variants thereof.

The reference discloses strain EF-76. See, e.g. Abstract. Agbessi *et al.* discloses that EF-76 is the same as ATCC BAA-668. See, e.g., page 1256, col. 2, last paragraph.

Claims 1-2, 21 and 22 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Agbessi *et al.*

The claims are directed to a strain of *Streptomyces* ATCC BAA-668 or variants thereof.

Agbessi *et al.* discloses *Streptomyces* strain EF-76 which is the same as ATCC BAA-668. See, e.g., page 1256, col. 2, last paragraph.

Claims 1-3 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beausejour *et al.* taken with Agbessi *et al.* and Suh (U.S. Patent No. 6,280,719).

The claims are directed to a strain of *Streptomyces* ATCC BAA-668 or variants thereof and compositions thereof.

The reference discloses *Streptomyces* strain EF-76. See, e.g. Abstract. Agbessi *et al.* discloses that EF-76 is the same as ATCC BAA-668. See, e.g., page 1256, col. 2, last paragraph.

The references differ from the claimed invention in that an inoculum comprising chitosan is not disclosed. However, Suh demonstrates that the use of chitosan comprising carriers is old and well known in the art, particularly in the context of pesticidal compositions of *Streptomyces*.

Art Unit: 1651

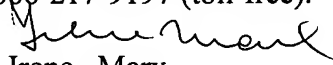
Therefore, it would have been obvious to one having ordinary skill in the art at the time the claimed invention was made to modify the composition of Beausejour *et al.* or Agbessi *et al.* by using chitosan as a carrier for the expected benefit of providing a pesticidal composition that is stable and has high viability retention.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irene Marx whose telephone number is (571) 272-0919. The examiner can normally be reached on M-F (6:30-3:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300 .

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Irene Marx
Primary Examiner
Art Unit 1651